

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID FUENTES, SR,  
Plaintiff,

v.

MR. MANNING, et al.,  
Defendants.

No. 2:23-cv-0386 CSK P

ORDER

On April 11, 2025, defendants filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 37 and 41. (ECF No. 43.) Plaintiff did not oppose the motion.

Local Rule 230(l) provides in part: “Failure of the responding party to file written opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion . . . .” Local Rule 230(l). On June 11, 2023, plaintiff was advised of the requirements for filing an opposition to a motion and that failure to oppose such a motion may be deemed a waiver of opposition to the motion. (ECF No. 27 at 6.) On March 11, 2025, the Court granted in part defendants’ motion to compel discovery, and plaintiff was granted an additional 21 days to provide written discovery responses to defendants. (ECF No. 42.) Plaintiff was cautioned that failure to comply with the order may result in the imposition of sanctions, including monetary sanctions or a recommendation that this action be dismissed for failure to cooperate in discovery or to comply with the Court’s order. (Id. at 5-6.) On April 11, 2025,

defendants filed their motion to dismiss, and provided evidence that no responses have been received from plaintiff since the Court's March 11, 2025 order. (ECF No. 43-2 at 2.)

Rule 41(b) of the Federal Rules of Civil Procedure provides:

**Involuntary Dismissal; Effect.** If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.

Fed. R. Civ. P. 41(b).

Good cause appearing, IT IS HEREBY ORDERED that, within thirty days from the date of this order, plaintiff shall file an opposition, if any, to the motion to dismiss. Failure to file an opposition will be deemed as consent to have the: (a) action dismissed for lack of prosecution; and (b) action dismissed based on plaintiff's failure to cooperate in discovery, and failure to comply with these rules and a court order. Said failure shall result in a recommendation that this action be dismissed pursuant to Federal Rule of Civil Procedure 41(b).

Dated: May 13, 2025

  
CHI SOO KIM  
UNITED STATES MAGISTRATE JUDGE

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